REMARKS/ARGUMENTS

1.)   Claim Amendments

Claims 1, 3, 6-9, 14 and 17 have been amended and claims 2, 4-5 and 15 have been cancelled; no new matter has been added. Claims 1-3, 6-14 and 16-17 remain pending in the application. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

2.)   Examiner Objections – Drawings

The Examiner objected to Figures 1, 2 and 3 for certain informalities. The Applicant has corrected the noted informalities by adding a "Prior Art" legend to Figures 1, 2 and 3, and by correcting a typographical error on Figure 3. The Applicant submits "formal" replacement sheets herewith. The Examiner's approval of the corrected drawings is respectfully requested.

3.)   Examiner Objections – Claims

The Examiner objected to claims 2-3, 6, 8-14 and 17 for various informalities. The Applicants have corrected the noted formalities, either as suggested by the Examiner or by changing the dependency of a claim to overcome the noted lack of antecedent basis.[1] The Examiner's approval of the amended claims is respectfully requested.

4.)   Claim Rejections - 35 U.S.C. §112

The Examiner rejected claim 15 as being indefinite. The Applicant has cancelled claim 15 and, therefore, the Examiner's rejection thereof is moot.

5.)   Claim Rejections – 35 U.S.C. §102(b) / 103(a)

The Examiner rejected claims 1, 4 and 16-17 as being anticipated by Duffie *et al.* (US 5,402,412); claims 2-3, 8-9, 11 and 14-15 as being unpatentable over Duffie in view

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[1] Claim 2 has been cancelled and the limitations thereof have been added to claim 1.

of Ramamurthy, *et al.* (US 6,304,551); claims 5-7 as being unpatentable over Duffie in

view of Sällberg, *et al.* (US 5,361,252); and claims 10 and 12-13 as being unpatentable

over Duffie in view of Ramamurthy and further in view of Sällberg. Whereas claim 1 has

been amended to include the limitations of claims 2, 4 and 5, the Applicant will address

the patentability of claim 1 based on the teachings of Duffie in view of Ramamurthy

Sällberg.

Claim 1 recites:

1. Method for controlling the traffic in an ATM (Asyncrounous Transfer Mode) network so as to maintain the Quality of Service (QoS) thereof by implementing Usage Parameter Control (UPC) comprising at least one leaky bucket unit arranged between an original cell flow of ATM-cells and a switch unit, there being used one counter for each bucket per connection, said counters being incremented and decremented according to predetermined criteria by means of timer counter means, characterized by the combination of the following steps:

decrementing the bucket counters at regular intervals but only when there are no arriving cells, and

computing real bucket values for a connection when a cell for said connection arrives;

characterized in that there is used a dual leaky bucket arrangement comprising an LDLBU (Logical Dual Leaky Bucket Unit) having two buckets in series which are arranged in the same process but given different priority, said LDLBU adapted for calculating whether an arriving ATM-cell is compliant with a traffic contract, and which performs said calculation after having read the connection number (n) of the ATM-cell in question (cell I+0) and thereafter the counter values related to that connection (n) from a CT (Counter Table); and,

characterized in that when said calculation is finished the LDLBU will send the new computed counter values to said CT, and depending on whether the ATM-cell is compliant or not will send a Send Cell signal or Not Send Cell Signal, respectively, to a One Cell buffer being part of said dual leaky bucket arrangement.

Claim 1 now includes the limitations of prior claims 2, 4 and 5, which have been

cancelled. With respect to the original limitations of claim 1 and the additional limitations

of claims 2, 4 and 5, the Examiner looks to the combined teachings of Ramamurthy,

Duffie and Sällberg. Those references, either alone or in combination, however, fails to

disclose the invention as claimed.

First, with respect to the limitations of claim 4 that have been added to claim 1, the Examiner states that Duffie discloses "two systems in parallel being a logical dual leaky bucket unit," referring to column 5, line 62 to column 6, line 2. The Examiner has mischaracterized the teaching of Duffie. What Duffie actually discloses is "[t]he use of an open collector output allows a plurality of systems constructed in a manner similar to system 10 to be coupled in parallel . . . [to allow] simultaneous monitoring for multiple event rate requirements." (emphasis added). In claim 1, however, Applicant has claimed: "a dual leaky bucket arrangement comprising an LDLBU (Logical Dual Leaky Bucket Unit) having two buckets in series which are arranged in the same process but given different priority." (emphasis added) In contrast, although Duffie discloses a system 10 as including a leaky bucket, the coupling of a plurality of such systems **in parallel** does not constitute a "dual leaky bucket" as that term is disclosed and claimed by the Applicant. In fact, nowhere in the teachings of Duffie is the term "dual" even used. Thus, Duffie does not disclose what the Examiner has asserted.

Second, with respect to the limitations of claim 2 that have been added to claim 1, the Examiner states that Duffie fails to disclose using two buckets with different priorities arranged in series. Whereas Applicants' claimed dual leaky bucket has two buckets in series, the Examiner's statement is a recognition that a plurality of the systems 10 disclosed by Duffie do not constitute a dual leaky bucket as claimed by Applicant. To overcome the deficiencies of Duffie, the Examiner looks to the teachings of Ramamurthy. Although Ramamurthy does disclose two leaky buckets in series, the Examiner has not pointed to any teaching or suggestion in Duffie or Ramamurthy to combine the teachings thereof. Even if there were such a suggestion, the Examiner has not considered the further additional limitations of claim 1 and, thus, has failed to establish a *prima facie* case of obviousness.

Third, with respect to the limitations of claim 5 that have been added to claim 1, the Examiner states that Sällberg discloses a one cell buffer. The teachings of Sällberg, however, begin by describing the deficiencies of various single and dual leaky bucket methods for monitoring the bandwidth of an incoming stream of data packets or cells. (column 1, line 15 to column 2, line 3). The solution proposed by Sällberg, however,

does not describe at all the use of one or more leaky buckets. Thus, it appears that the teachings of Sällberg, in fact, teach away from the combination of its teachings with a leaky bucket system, much less the system disclosed and claimed by Applicant. Accordingly, Sällberg fails to overcome the deficiencies of Duffie and Ramamurthy.

In rejecting Applicant's invention, the Examiner has impermissibly used hindsight by reading back into the prior art the teachings of Applicant's own disclosure. The Examiner has used Applicant's claims as a blueprint to pick and chose from the prior art the individual claim limitations, without regard to the manner in which those limitations have been combined by Applicant to effect a novel and useful improvement to the state of the art. Various bits of data or teachings of the prior art are not properly combined unless there is something in the prior art itself that suggests that those teachings could or should be combined. Both the suggestion for combining teachings to make the invention and its reasonable likelihood of success "must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem.* 837 F.2d 469, 473 (Fed. Cir. 1988). Because the Examiner has failed to meet that burden, he has failed to establish a *prima facie* case of obviousness and, therefore, claim 1 should be allowed. Whereas claims 3, 6-14 and 16-17 are dependent from claim 1, and include the limitations thereof, those claims are also now allowable.
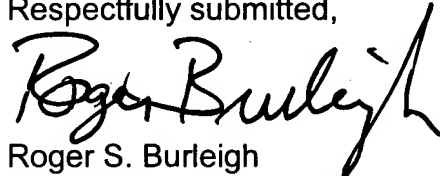
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CONCLUSION

In view of the foregoing amendments and remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for claims 1, 3, 6-14 and 16-17.

The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,

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Date: January 11, 2005

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